U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service	)))))	MM Docket No. 87-268

MOTION OF THE SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY FOR LEAVE TO FILE COMMENTS OUT OF TIME

The Office of Advocacy respectfully requests leave from the Federal Communications Commission (hereinafter commission) to file the attached document as a formal comment letter on July 31, 1992. The grounds for this motion are:

1. The Office of Advocacy received new information on July 16, 1992, one day before the filing date. The additional information helped to provide a more detailed and accurate description of the issues and the impact that they would have on small businesses. However, the complexity of the issues and breadth of information delayed the incorporation of the new material into the comment letter. The Office of Advocacy, as the federal agency designated to represent the interests of small

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businesses before other federal agencies, believes that its views on this subject will be of extreme value to the Commission and to other interested parties.

2. Filing of the Comments has been unavoidably delayed due to the need for review and coordination within the Office of Advocacy.

3. Acceptance of these Comments will neither prejudice any party nor delay resolution of this proceeding.

Pursuant to 47 C.F.R. § 1.46, and for the foregoing reasons, the Office of Advocacy requests that the FCC accept the attached document as a formal comment letter.

Respectfully Submitted,

Thomas P. Kerester

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Chief Counsel for Advocacy

Barry Pineles, Esq.

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Dated: July 31, 1992

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service	)))))	MM Docket No. 87-268

Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Second Further Notice of Proposed Rulemaking

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July 17, 1992

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service	)))))	MM Docket No. 87-268

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Second Further Notice of Proposed Rulemaking

I. Introduction

On April 9, 1992, the Federal Communications Commission (FCC or Commission) issued a Second Report and Order and Further Notice of Proposed Rulemaking in the above-titled proceeding. The Commission decided in the Second Report and Order a number of issues related to the implementation of Advanced Television Systems (ATV).[1] In addition, the Commission requested further comment on a number of other issues related to the establishment of ATV broadcast technology.

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[1] Advanced Television Systems incorporate technology to transmit enhanced audio and video signals. Such systems will provide sharper images, zoom capacity, and memory functions.

The Office of Advocacy is concerned specifically with two issues: (1) whether the decision to set a firm date for requiring all broadcasters to convert to ATV at a designated point in the future will be destructive to small broadcasters; and (2) whether networks will be allowed to sell programming transmitted by ATV to non-affiliates during the suspension of the prohibition against a dual network feed.

The FCC recognized that proposals concerning the implementation of ATV may have a significant economic impact on the 1,495 commercial and educational UHF and VHF television stations, approximately 4,833 translator stations, and approximately 1,210 low-power television stations, most of which are small businesses.[2] Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12 (hereinafter referred to as the RFA), the Commission prepared an initial regulatory flexibility analysis. The Office of Advocacy commends the Commission for preparing an initial regulatory flexibility analysis. We support the FCC's efforts to maintain flexibility with respect to the implementation of ATV technology and request that the Commission

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[2] The RFA defines a small business by reference to the Small Business Act, 15 U.S.C. § 632. That Act defines a small business as any business that is independently owned and operated and not dominant in its field. Under that authority, the SBA has determined that a small television station is one with gross revenues of less than $7 million. 13 C.F.R. Part 121. The FCC, for purposes of complying with the Regulatory Flexibility Act, can adopt a different definition of small business, but the FCC has not chosen this option. Therefore, the Office of Advocacy bases its comments on the size-standard specified in 13 C.F.R. Part 121.

adopt regulations that will provide small broadcasters maximum flexibility in establishing ATV systems.

II. **Mandatory Conversion to ATV**

In the Report and Order, the Commission mandates that once ATV becomes the predominant mode of broadcasting, no National Television Systems Committee (NTSC) broadcasting will be permitted.[3] The Commission, in the final regulatory flexibility analysis, contended that the mandatory conversion is necessary for administrative simplicity. The Office of Advocacy disagrees and believes that greater flexibility in conversion will meet the FCC's goals of universal ATV implementation. Making conversion to ATV mandatory will put a crippling strain on small broadcasters from which they may never be able to recover. Forcing large capital expenditures at a time when the Commission finds ATV has become popular, rather than when broadcasters determine for themselves that conversion is feasible, could force stations into bankruptcy. The Office of Advocacy and the Commission received numerous complaints from small broadcasters asserting that they will be unable to bear the financial burden of a forced conversion. ATV broadcast equipment suppliers will

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[3] NTSC is the current method of broadcasting television signals in the United States. While ATV systems are being built, the FCC will require that simulcasting on both ATV and NTSC occur for those broadcasters that make an early conversion to ATV.

enjoy an artificial market and have no incentive to offer reasonable pricing. The Office of Advocacy appreciates the need to set a date for conversion for stations which have made the investment in ATV equipment. Stations should not tie up the limited amount of existing spectrum with their second 6 MHz channel for an indefinite period of time. Setting a firm date for those stations will serve the purpose of freeing spectrum.

However, smaller stations can ill afford the initial investment for converting to ATV. Requiring them to convert at a definite point in the future would be an unfair and unrealistic goal to impose upon them. These smaller broadcasters comprise a necessary facet of a competitive market[4] and play a crucial role in offering diversity of programming. Rather than adopting a "field of dreams" approach, the FCC should wait for the market to develop naturally, based on consumer demand. A market-driven implementation of ATV will allow stations to extract the greatest use from their current facilities and broadcast equipment, plan a conversion schedule suitable to their size and audience, and obtain the best financing possible. The Office of Advocacy urges the Commission to reconsider the decision to impose a firm date

[4] In fact, the Commission in numerous other proceedings has raised concerns about the viability of local broadcasters. *See, e.g.*, In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, slip op. ¶¶ 4-6, MM Docket No. 91-221; In the Matter of Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, slip op. ¶ 1, MM Docket 92-51.

for conversion. This reasoning applies with even greater imperative to the requirement that low-power television stations convert at the same time.[5]

III. Dual Network Prohibition

The FCC currently prohibits networks from sending feeds to more than one channel in a broadcast area. 47 C.F.R. § 73.3555. The Commission proposes suspending the dual network prohibition rules to permit existing licensees to hold both an NTSC and an ATV license until they are required to convert to ATV service exclusively. The Office of Advocacy agrees that suspension of the dual network rule is necessary for the purpose of granting a second 6 MHz channel so that ATV may be efficiently implemented. The suspension should not, however, extend to circumstances in which a network's two feeds (ATV and NTSC) go to different licensees in the same broadcast market. Three reasons support this position.

First, network affiliates depend upon the programming they receive from their network for a substantial portion of their

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[5] Low-power television stations are broadcast television facilities with secondary service status that are authorized to retransmit the programs and signals of TV broadcast stations. These stations also may originate programming and run subscription television services. Low-power stations do not have broad audiences and their financial capacities to adopt ATV is open to question.

advertising revenues. Allowing a non-affiliate to broadcast ATV programs will deprive the affiliate of the revenues it might have received by airing the same program over an NTSC signal because consumers will migrate to the ATV broadcast and thus reduce ratings for the affiliate. The network will be unaffected by such migration. Or, worse yet, the affiliate will completely lose out if the programming was sent to another channel and the affiliate could not broadcast the program on an NTSC signal. Even in a best-case scenario, if a network does sell a program to a non-affiliate, the affiliate will have to compete with the other station for viewers. Thus, the network will be pushing its affiliate into competition with a non-affiliate while doing absolutely nothing to its own revenue.[6]

Second, allowing the network's ATV feed to go to a different licensee in the market defeats the purpose of the suspension. The Commission asserts that the suspension will be transitional only and expressly limited to permitting networks to provide an ATV feed. Providing an incentive for independent stations to invest in ATV equipment on the premise that they will air a network ATV feed will have deleterious effects on broadcasters. The network affiliate will either be unable to compete with the independent and cease operation, or, when the affiliate converts to ATV, the independent station will have additional channel

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[6] This is akin to a merchant selling arms to both sides in a war.

capacity it cannot fill. The small station's investment in ATV broadcasting will then become, like the albatross of the Ancient Mariner, a millstone around its operation. This will result in financial peril for the independent station. In either case, the ultimate result will be harm to local broadcasters.

Finally, networks argue that consumers might initially be denied ATV programming in certain areas and they must be allowed to provide ATV programming to those stations willing to invest in the equipment. ATV remains a technology-driven science. Because it is not consumer-driven, the argument that some consumers will be denied access to a portion of ATV programming is outweighed by the potential damage which may be caused to the local broadcasters. The loss of revenues which an affiliate might face by not converting to ATV from the start is an option which should remain the exclusive right of the affiliate. The advantages of being an affiliate must remain with the station which has made the investment in that particular network. Affiliates' investments must not be freely given away to independent stations which wishes to use the suspension of the dual network rule in a way which overreaches its necessary use. The Office of Advocacy sees no reason to bolster the health of the networks at the expense of their local affiliates.

Consumers need not be denied the program or the information being sent. It is reasonable to assume that a network's most popular and innovative programming will be the first to become available in ATV, thereby generating the most revenue. Depriving an affiliate of lucrative programming which the network can broadcast in both ATV and NTSC can have significant adverse economic consequences for the affiliate. Therefore, to the extent that affiliates wish to maximize their revenues, they will invest in ATV technology when they believe it is appropriate. Until that time, networks must be prohibited from placing their own affiliates at war with other stations in the same market.

IV. **Conclusion**

The Office of Advocacy agrees with the Commission that ATV is worth pursuing. The Office of Advocacy also commends the FCC for recognizing the significant economic impacts that may be imposed on small businesses by the adoption of ATV technology. However, the Office of Advocacy remains troubled by the potential adverse impacts that adoption of this technology will have on local broadcasters. The Office of Advocacy requests that Commission reexamine its decision concerning mandatory conversion to ATV. A policy of maximum flexibility will reduce the burdens on small broadcasters while still permitting the adoption of ATV technology. The Office of Advocacy also opposes allowing networks to send a separate ATV feed to a local broadcaster other than its network affiliate. This benefits networks without any concomitant benefits to consumers or local broadcasters.

Respectfully submitted,

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